

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2206 OF 2006

M/s.Meenakshi Bhavan,)
Acharya Pandya Marg,)
Parel, Mumbai 12.) ...Appellant

Versus

Employees' State Insurance)
Corporation, Panchsheel Bhavan,)
Shahid Bhagatsingh Road,)
Colaba, Mumbai 400 005.) ...Respondent

Shri S.M.Naik for the Appellant.

Shri H.V.Mehta for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : FEBRUARY 27, 2007.

ORAL JUDGMENT:

1. Heard Advocates appearing for the parties. The Appellant filed an Application under section 75 of the Employees' State Insurance Act, 1948. The cause of action for filing the said Application was an order passed by the Respondent under section 45A of the said Act of 1948. On 13th September, 1994, the Advocate for the Appellant remained absent as a result of which the Application was dismissed for default by the learned Judge of the E.S.I Court. An Application was filed by the Appellant for restoration of the Application under

section 75 of the said Act of 1948. By the impugned judgment and order dated 03rd December, 2005, the learned Judge of the E.S.I Court has rejected the said Application.

2. The learned Advocate for the Appellant submitted that one of the partners of the Appellants was attending to the proceedings of the Application under section 75 of the said Act and the other partners were not conversant with the facts of the case. He pointed out that the concerned partner Shri Mahale was unable to attend the court as a result of which the Application was dismissed. He stated that the entire amount of contribution payable on the basis of the impugned order passed under section 45A of the said Act of 1948 has been already deposited by the Appellant with the Respondent-Corporation. He submitted that the learned Trial Judge ought to have adopted a liberal approach and restored the Application. The learned Advocate for the Respondent supported the impugned order and submitted that no interference is called for.

3. I have considered the submissions. The learned Judge has observed that no material has been produced by

the Appellant to show that the concerned partner was sick. The learned Judge has observed that nothing prevented the other partners from attending to the dates fixed in the Application.

4. It must be noted here that the reasons which were set out in Application for restoration were the reasons set out in the Application for condonation of delay in filing Application for restoration. Considering the same reasons, the delay was condoned by the learned Judge of the E.S.I Court. If the case made out by the Appellant was accepted by the trial Court at the stage of condonation of delay, there was no reason why the case of the Appellant should not have been accepted while considering the Application for restoration. It is an admitted position that on the day on which Application was dismissed, the Advocate appointed by the Applicant was absent. Moreover, the entire amount due and payable on the basis of the order under section 45A of the said Act of 1948 has been deposited by the Applicant. Therefore, there will be hardly any prejudice to the Respondent if the Application for restoration is allowed.

5. The entire approach of the learned Trial Judge is erroneous which raises substantial question of law. Hence, Appeal must succeed.

6. Hence, I pass the following order:

- (i) The impugned Judgment and Order dated 03rd December, 2005 is quashed and set aside and the Application filed by the Appellant under section 75 of the Employees' State Insurance Act, 1948 is restored to the file of the E.S.I Court.
- (ii) The concerned court will decide the said Application expeditiously.
- (iii) The Appellant is directed to pay costs of Rs.5,000/- of this Appeal to the Respondent-Corporation within a period of eight weeks from today.
- (iv) Appeal is allowed in above terms.

JUDGE